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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

PARNELL COLVIN,

Plaintiff,

vs.

TAKO LLC,

Defendant.

Case No.: 2:22-cv-00082-CDS-DJA

**DEFENDANT TAKO LLC'S
MOTION TO DISMISS**

COMES NOW, Defendant TAKO LLC (hereinafter "Tako" or "Defendant"), by and through its counsel, TAYLOR SIMPSON, ESQ. of KERR SIMPSON ATTORNEYS AT LAW, and hereby respectfully submits this Motion to Dismiss Mr. Colvin's Complaint for failure to state a claim upon which relief may be granted.

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1 This Motion is based on the following Memorandum of Points and Authorities, the papers
2 and pleadings on file herein, and the argument of counsel at the hearing of this matter.

3 DATED this 12th day of September 2022.

4 KERR SIMPSON ATTORNEYS AT LAW

5
6 /s/ Taylor Simpson, Esq.

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18 **MEMORANDUM OF POINTS AND AUTHORITIES**

19 **I. INTRODUCTION**

20 The Court should grant Tako's Motion to Dismiss because Mr. Colvin has failed to state a
21 plausible claim upon which relief may be granted. Tako respectfully requests the Court dismiss
22 the present matter due to Mr. Colvin's failure to state a plausible claim upon which relief may be
23 granted. Mr. Colvin fails to allege with any modicum of specificity what Tako has done to deprive
24 him of his constitutional due process rights, what rights were specifically infringed, or what life,
25 liberty, or property Mr. Colvin was deprived of without due process. Rather, the intent behind
26 filing the present action is likely nefarious in that the present matter was filed only as a means to
27 improperly delay the Justice Court proceedings and remain in the Property without paying rent to
28 Tako's financial detriment.

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II. LEGAL ARGUMENT

a. This Court Should Dismiss This Lawsuit Pursuant to F.R.C.P. Rule 12(b)(6).

The Court should dismiss the instant lawsuit because Mr. Colvin has failed to state a claim upon which relief can be granted. Pursuant to F.R.C.P. Rule 12(b)(6), “failure to state a claim upon which relief can be granted,” is a basis to dismiss a Complaint where the moving party can demonstrate beyond doubt that the non-moving party cannot provide a set of facts in support of his claim which would entitle them to relief, such that this Motion to Dismiss should be granted. *Puckett v. Park Place Entertainment Corp.*, 332 F. Supp. 2d 1349, 1352 (D. Nev. 2004). In making a determination, the allegations made in the Complaint are generally taken as true and viewed in the light most favorable to the non-moving party. *Id.* While the Court should typically take the allegations as alleged in the Complaint as true, “[c]ourts do not assume the truth of legal conclusions merely because they are cast in the form of factual allegations.” *Id.* (quoting, *Western Mining Counsel v. Watt*, 643 F.2d 618,624 (9th Cir. 1981)). It has specifically been held that “conclusory allegations of law and unwanted inferences are insufficient to defend a Motion to Dismiss for failure to state a claim.” *In re Stac Electronics Securities Litigation*, 89 F.3d 1399, 1403 (9th Cir. 1996) (quoting, *In re VeriFone Securities Litigation*, 11 F.3d 865,868 (9th Cir. 1993)).

Furthermore, the U.S. Supreme Court clarified the pleadings obligation of F.R.C.P. 8(a)(2) in *Bell Atlantic Corp. v. Twombly* by holding that:

A Petitioner's obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do Factual allegations must be enough to raise the right to relief above the speculative level.

127 S. Ct. 1955, 1964 (2007); see also: Oaktree Capital Mgmt., L.P. v. KPMG, 963 F.Supp.2d 1064, 1073 (D. Nev. 2013); *Welder v. Univ. of Southern Nevada*, 833 F.Supp.2d 1240, 1243 (D. Nev. 2011).

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“Determining whether a complaint states a plausible claim for relief ... [is] a context specific task that requires the reviewing court to draw on its judicial experience and common sense. But where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the Complaint has alleged—but it has not ‘show[n]’—‘that the pleader is entitled to relief.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678-679, 129 S. Ct. 1937, 1950 (2009) (quoting Fed. R. Civ. P. 8(a)(2)) (citations omitted).

Although “a complaint need not contain detailed factual allegations,” *Clemens v. DaimlerChrysler Corp.*, 534 F.3d 1017, 1022 (9th Cir. 2008) (quoting *Twombly*, 127 S. Ct. at 1974), the court will not assume that the plaintiff can prove facts different from those alleged in the complaint. *Associated Gen. Contractors of Cal. v. Cal. State Council of Carpenters*, 459 U.S. 519, 526, 103 S. Ct. 897, 74 L.Ed.2d 723 (1983); *Jack Russell Terrier Network of N. Cal. v. Am. Kennel Club, Inc.*, 407 F.3d 1027, 1035 (9th Cir. 2005). Similarly, legal conclusions couched as factual allegations are not given a presumption of truthfulness, and “conclusory allegations of law and unwarranted inferences are not sufficient to defeat a motion to dismiss.” *Pareto v. F.D.I.C.*, 139 F.3d 696, 699 (9th Cir. 1998). A court may dismiss as a frivolous complaint, a complaint which recites bare legal conclusions with no suggestion of supporting facts, or postulating events, and the complaint merely states circumstances of a wholly fanciful kind. *Crisafi v. Holland*, 655 F.2d 1305, 1307-08 (D.C.Cir.1981) (per curiam).

Here, the Court should dismiss Mr. Colvin’s case because Mr. Colvin has failed to state a claim upon which relief may be granted. Mr. Colvin’s Complaint is vague at best. The arguments set forth therein essentially allege that Mr. Colvin has medical concerns and is unable to participate in court proceedings. Mr. Colvin does not identify in the Complaint which court proceedings he was unable to participate in. Furthermore, Mr. Colvin failed to allege how his due process rights were violated. Mr. Colvin alleges that Tako “still wants to proceed which [Mr. Colvin] is unable

1 to.” *See* Complaint [Docket No. 1]. This, the Complaint argues, amounts to a violation of Mr.
 2 Colvin’s constitutional due process rights. *Id.* Even if the Court were able to ascertain which
 3 proceedings the Complaint references, there simply is no facts that plausibly establish a claim.
 4 Tako has only been attempting to evict Mr. Colvin for his failure to pay rent for over three years.
 5 Simply exercising a right to evict Mr. Colvin is not a violation of his due process rights. In fact,
 6 Mr. Colvin remains in the Property despite not paying rent for over three years. Therefore, the
 7 Court should grant Tako’s Motion to Dismiss because the Complaint has failed to set forth a
 8 plausible set of facts or claim upon which relief may be granted.
 9

10 III. CONCLUSION

11 In conclusion, Tako respectfully requests the Court dismiss the instant case because Mr.
 12 Colvin has failed to state a plausible claim upon which relief can be granted.
 13

14 DATED this 12th day of September 2022.

KERR SIMPSON ATTORNEYS AT LAW

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16 /s/ Taylor Simpson, Esq.

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CERTIFICATE OF SERVICE

I certify that I am an employee of Kerr Simpson Attorneys at Law, and the on the 22nd day of September 2022, a true and correct copy of the foregoing **DEFENDANT TAKO LLC'S MOTION TO DISMISS** was electronically filed with the Clerk of the Court by using CM/ECF service which will provide copies to all parties of record registered to receive CM/ECF notification and via first class United States mail.

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Defendant, Pro Se

/s/ Lisa Peters
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